



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

999 18TH STREET- SUITE 300

DENVER, CO 80202-2466

Phone 800-227-8917

<http://www.epa.gov/region08>

SEP - 1 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#7003-2260-0001-7791-0768

Ref: 8ENF-W

David J. Paulson
Northeast Ridge Development Company
16621 94 ½ Street, SE
Hankinson, North Dakota 58041

Re: Findings of Violation and Administrative Order for
Compliance,
Docket No. **CWA-08-2005-0046**

and

Request for Information Pursuant to Section 308 of
the Clean Water Act, 33 U.S.C. § 1318

Dear Mr. Paulson:

Based on our review of all available information, the United States Environmental Protection Agency ("EPA") has determined that you and Northeast Ridge Development Company ("Respondents"), are in violation of sections 301 and 404 of the Clean Water Act, as amended ("CWA"), 33 U.S.C. §§ 1311 and 1344. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344. Section 404 of the CWA requires that an authorizing permit be obtained from the United States Army Corps of Engineers ("Corps") prior to the discharge of dredged or fill material into waters of the United States. See, 33 U.S.C. § 1311. Waters of the United States include both surface waters and wetlands as defined by 40 C.F.R. § 122.2 and 33 C.F.R. § 328.3.

Specifically, EPA has determined that the Respondents discharged dredged and/or fill material at the Richland County site without first obtaining an appropriate section 404 permit from the Corps. These discharges of pollutants into Lake Elsie and its adjacent wetlands have occurred on Respondents' property at a site located in Sections 23 and 26, Township 130 North, Range 50 West, in Richland County, North Dakota.



Printed on Recycled Paper

Enclosed please find a document entitled "Findings of Violation and Administrative Order for Compliance" ("Order"), which specifies the nature of the violations and describes actions necessary in order for the Respondents to achieve compliance with sections 301 and 404 of the CWA. Pursuant to this Order, within five days after Respondents' receipt of this Order, Respondents must inform EPA in writing of their intent to fully comply with the Order. EPA's authority for such action is provided under section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3).

Additionally, as part of EPA's investigation of the discharges described above and your compliance with the storm water regulations at the Northeast Ridge Development site, please find a second document entitled "Request for Information" issued pursuant to section 308 of the CWA. Congress has provided EPA with the authority to request this information, under section 308 of the CWA, 33 U.S.C. § 1318. Please submit your answers to this Request for Information within thirty (30) calendar days of your receipt of this letter.

The CWA requires the Administrator of EPA to take all appropriate enforcement action necessary to secure prompt compliance with the CWA and any order issued thereunder. Section 309 of the CWA, 33 U.S.C. § 1319, authorizes a variety of possible enforcement actions, including filing of a civil or criminal action, administrative penalty action, and/or debarment from Federal contracts and/or loans for any noncompliance with the CWA or an order issued pursuant to the CWA. Please be advised that failure to comply with the requirements of the Order is a violation of that Order and may be enforced through the mechanisms referenced above. Please also be advised that the issuance of this Order and Request for Information does not preclude civil or criminal actions in U.S. District Court pursuant to sections 309(b) or (c) of the CWA, 33 U.S.C. §§ 1319(b) or (c), or assessment of civil penalties pursuant to sections 309(d) or (g) of the CWA, 33 U.S.C. §§ 1319(d) or (g), for the violations cited in the Order or for any other violations that Respondents may have committed prior to or may commit after the issuance of the enclosed Order.

EPA has agreed to notify small businesses of their right to comment on regulatory enforcement activities at the time of an Agency enforcement activity pursuant to the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"). SBREFA does not eliminate Respondents' responsibility to comply with the Act, the Order, or Request for Information, nor does it create any new rights or defenses under law. We have enclosed a SBREFA information sheet containing further information on compliance assistance resources and tools available to small businesses.



Please review the Order and Request for Information carefully. If you have any questions, the most knowledgeable people on my staff are Sheldon Muller, Enforcement Attorney, at 303-312-6916, and Kenneth Champagne, Section 404 Enforcement Officer, at 303-312-6608.

Sincerely,

for *Eddie A Sierra*
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosures

1. Section 404 Findings of Violation and Administrative Order for Compliance
2. Section 308 Request for Information
3. SBREFA Information Sheet

cc: Dennis Fewless, NDDH, w/enclosures
Gary Bracht, NDDH, w/o enclosures
Randy Kowalski, NDDH, w/o enclosures
David LaGrone, U.S. Army Corps of Engineers, w/enclosures
Daniel Cimarosti, U.S. Army Corps of Engineers, w/enclosures
Tina Artemis, EPA, 8RC, w/enclosures



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
CLERK

IN THE MATTER OF:

David J. Paulson and
Northeast Ridge Development Company
16621 94 ½ R Street, SE
Hankinson, North Dakota 58041

Respondents.

FINDINGS OF VIOLATION AND
ADMINISTRATIVE ORDER FOR
COMPLIANCE

Docket No. CWA-08-2005-0046

I. STATUTORY AUTHORITY

1. This Findings of Violation and Administrative Order for Compliance ("Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319. This authority has been properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8. The Order is based on the findings of violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), which, among other things, prohibits the discharge of pollutants into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

II. FINDINGS OF VIOLATION

2. Respondent Northeast Ridge Development Company is a North Dakota corporation having a registered office address of 16621 94 ½ R Street, SE, Hankinson, North Dakota 58041. Northeast Ridge Development Company is currently in good standing with the North Dakota Secretary of State's office and its registered agent is David J. Paulson.

3. At all relevant times, David J. Paulson and/or Northeast Ridge Development Company owned, controlled and/or operated the property adjacent to Lake Elsie located in Sections 23 and 26, Township 130 North, Range 50 West, Richland County, North Dakota (the "Northeast Ridge Property").

4. Lake Elsie is an intrastate lake which is or could be used by interstate or foreign travelers for recreational or other purposes. Lake Elsie is subject to the ebb and flow of the tide and is currently used, or was used in the past, or may be susceptible to use in interstate or foreign commerce.

5. On or about February 5, 1997, Respondents submitted an Application for a Department of the Army Permit to the U.S. Army Corps of Engineers' ("Corps") North Dakota Regulatory Office, which proposed the construction of a channel and marina that would impact Lake Elsie and wetlands adjacent to Lake Elsie located on the Northeast Ridge Property. The Corps assigned #199760033 to the February 5, 1997 permit application.

6. In a letter to Respondents dated February 20, 1997, the Corps requested additional information necessary to consider permit application #199760033 complete. The Corps again requested this additional information in a letter to Respondents dated June 6, 1997.

7. In a letter to Respondents dated June 18, 1997, the Corps withdrew permit application #19976033 from its active files, as agreed to by Respondents during a phone conversation on June 17, 1997, due to issues regarding United States Fish and Wildlife Service ("USFWS") wetland easements on the Northeast Ridge Property.

8. On October 30, 1998, Congress passed the Migratory Bird Treaty Reform Act of 1998. Section 204 of that act terminated the jurisdiction of the USFWS to approximately 634.7

acres of land and water in Richland County, North Dakota, known as the "Lake Elsie National Wildlife Refuge." On or about March 15, 1999, the USFWS further implemented section 204 of that act by executing a deed quit-claiming, revoking, discharging, cancelling and rendering null and void and of no effect the USFWS's easement interests in the parcels of land in Richland County, North Dakota, specified in the quit claim deed.

9. On or about January 14, 1999, Respondents submitted a second Application for Department of the Army Permit to the Corps, which proposed the construction of a channel, marina, and residential development that would impact Lake Elsie and wetlands adjacent to Lake Elsie located on the Northeast Ridge Property. The Corps assigned #199960033 to the permit application.

10. In reference to permit application #199960033, the Corps sent letters to Respondents dated February 10, 1999, and March 19, 1999, which requested additional information necessary to consider the permit application complete and indicated that a wetland delineation and a practicable alternatives analysis needed to be provided prior to commencement of permit processing. The Corps again requested this additional information in a letter to Respondents dated April 21, 1999.

11. On or about May 27, 1999, the Natural Resources Conservation Service ("NRCS") conducted a wetlands delineation at the Northeast Ridge Property. In a letter to the Corps dated June 14, 1999, Respondents provided two (2) alternatives for permit application #199960033; both alternatives proposed approximately 4.94 acres of impacts to wetlands on the Northeast Ridge Property.

12. In a letter to Respondents dated June 18, 1999, the Corps stated that if the project, as then proposed in permit application #199960033, were to be approved, compensatory mitigation for approximately 4.94 acres of impacts to wetlands would be required; the Corps therefore requested that Respondents submit a conceptual mitigation plan to the Corps for review and evaluation.

13. On September 20, 1999, the Corp issued a public notice for permit application #199960033. The stated purpose of the public notice was to inform the public and other interested parties, and to solicit their comments, regarding the proposed project on the Northeast Ridge Property. The public notice described the proposed project as the excavation of an inlet channel and marina impacting approximately 3.54 acres of seasonal/semipermanent wetlands, and placement of fill material in approximately 1.40 acres of wetlands adjacent to an existing roadway located on the north side of the proposed marina site in order to build up that roadway. The September 20, 1999 public notice stated that no fill material would be placed into wetlands adjacent to the marina.

14. On February 17, 2000, Respondents submitted a mitigation plan to the Corps which proposed the creation of 1.4 acres of wetlands on-site and 3.5 acres of wetlands off-site to compensate for approximately 4.94 acres of impacts to wetlands under permit application #199960033.

15. In a letter to Respondents dated December 7, 2001, the Corps withdrew permit application #19996033 from its permit review process due to Respondents' inability to obtain water quality certification for the proposed project from the North Dakota Department of Health, as required pursuant to section 401 of the CWA, 33 U.S.C. § 1341.

16. On July 13, 2004, and October 6, 2004, the Corps conducted inspections of the Northeast Ridge Property after receiving a complaint of impacts to wetlands. The Corps found, and EPA through issuance of this Order finds, that Respondents and/or their agents discharged dredged and/or fill material into waters of the United States during construction of an inlet channel connecting Lake Elsie and its adjacent wetland. The Corps also found, and EPA hereby finds, that Respondents and/or their agents discharged dredged and/or fill material to waters of the United States by placing earthen fill into the southeast and northwest boundaries of the wetlands located adjacent to Lake Elsie and on the Northeast Ridge Property. These unauthorized activities were components of Respondents' proposed project under permit applications #19976033 and #19996033. The Corps estimated that approximately 1.5 acres of waters and wetlands had been filled with dredged and/or fill material without authorization.

17. By letter dated November 1, 2004, the Corps found, and EPA through issuance of this Order finds, that Respondents' actions, as described in paragraph 16 of Section II of this Order, required prior Corps authorization and that the required authorization had not been granted. Further, the Corps directed Respondents to "cease and desist any further work within Lake Elsie and its adjacent wetlands."

18. The activities described in paragraph 16 of Section II of this Order were performed using common earthmoving vehicles and equipment, all of which were operated by Respondents and/or by one or more individuals on behalf of Respondents.

19. Respondents are "persons" within the meaning of section 502(5) of the CWA, 33 U.S.C. § 1362(5).

20. The discharged dredged material referenced in paragraph 16 of Section II of this Order are, and were at all relevant times, "dredged material" within the meaning of 33 C.F.R. § 323.2(c) and "pollutants" within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The discharged fill material referenced in paragraph 16 of Section II of this Order are and were at all relevant times "fill material" within the meaning of 33 C.F.R. § 323.2(e) and "pollutants" within the meaning of section 502(6) of the CWA, 33 U.S.C. § 1362(6).

22. Lake Elsie and its adjacent wetlands that were filled and disturbed by Respondents' unauthorized activities provided various functions and values, including: wildlife habitat for birds, mammals, reptiles and amphibians; water quality enhancement; flood attenuation; and/or aesthetics.

23. The vehicles and equipment described in paragraph 18 of Section II of this Order are and were at all relevant times each a "point source" within the meaning of section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. Lake Elsie and its adjacent wetlands referenced in paragraphs 4 and 5 of Section II of this Order are and were at all relevant times "waters of the United States" within the meaning of 33 C.F.R. § 328.3(a) and therefore "navigable waters" within the meaning of section 502(7) of the CWA, 33 U.S.C. § 1362(7).

25. The placement of dredged or fill material into Lake Elsie or its adjacent wetlands constitutes the "discharge of pollutants" within the meaning of section 502(12) of the CWA, 33 U.S.C. § 1362(12).

26. Section 301(a) of the CWA, 33 U.S.C. § 1311, prohibits, among other things, the discharge of pollutants by any person into waters of the United States except as in compliance with section 404 of the CWA, 33 U.S.C. § 1344.

27. Section 404 of the CWA, 33 U.S.C. § 1344, sets forth a permitting system authorizing the Secretary of the Army, acting through the Chief of Engineers of the Corps, to issue permits for the discharge of dredged or fill material into navigable waters, which are defined as waters of the United States.

28. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.

29. Respondents are not and never have been authorized by a permit issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, to conduct any of the activities described in paragraph 16 of Section II of this Order.

30. The activities conducted by Respondents and/or their agents as described in paragraph 16 of Section II of this Order violate section 301 of the CWA, 33 U.S.C. § 1311. Each discharge of pollutants from a point source by Respondents into waters of the United States without the required permits issued pursuant to section 404 of the CWA, 33 U.S.C. § 1344, constitutes a violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a). Each day the discharges remain in place without the required permits constitutes an additional day of violation of section 301(a).

31. The removal of the dredged and fill material illegally discharged into waters of the United States at Respondents' property and restoration of the impacted waters, including Lake

Elsie and its adjacent wetlands, to a condition that closely approximates their condition and function prior to the discharge of the dredged and fill material, can be achieved as a practical matter through commonly used methods of construction, digging, revegetation, and best management practices.

32. Activities to be carried out under this Order are remedial, not punitive, and are necessary to achieve the CWA's objective "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters," as specified in section 101(a) of the CWA, 33 U.S.C. § 1251(a). The removal and restoration described in paragraph 31 of Section II of this Order are appropriate to alleviate actual and potential harm to water quality, aquatic habitat, and wildlife habitat caused by Respondents' unpermitted activities.

33. This Order was issued after consultation and coordination with the United States Army Corps of Engineers, Omaha District.

III. ORDER

Based upon the foregoing FINDINGS OF VIOLATION, and pursuant to the authority vested in the Administrator of the EPA pursuant to sections 308 and 309(a) of the CWA, 33 U.S.C. §§ 1318 and 1319(a), as properly delegated to the Assistant Regional Administrator of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8, it is hereby ORDERED:

1. Respondents shall immediately terminate all unauthorized discharges of dredged or fill material, now and in the future, into waters of the United States, unless specifically authorized by the Corps under a valid permit issued pursuant to section 404 of the CWA,

33 U.S.C. § 1344. This prohibition includes all mechanical land clearing, dredging, filling, grading, leveling, installation of utilities, construction, and any other activities that result in a discharge of dredged or fill material into waters of the United States.

2. Within five (5) calendar days of receipt of this Order, Respondents shall inform EPA in writing of Respondents' intent to fully comply with the Order. EPA requests that Respondents meet with EPA within fourteen (14) calendar days of issuance of this Order if there are concerns or questions about the requirements of the Order. The scheduling of such a meeting shall not alter Respondents' responsibility to meet any of the deadlines specified in this Order unless otherwise clearly stated in a written communication to Respondents by EPA.

3. Upon EPA approval of the Restoration Plan required by paragraph 7 of Section III of this Order, Respondents shall remove all dredged and fill materials that were discharged as a result of the violations identified in this Order and restore Lake Elsie and its adjacent wetlands to their pre-impact condition and grade, unless otherwise approved by EPA in the Restoration Plan.

4. All dredged and fill material removal and restoration activities shall be conducted in accordance with an EPA-approved Restoration plan prepared by a consultant experienced in wetland restoration whose qualifications are acceptable to EPA. The consultant also shall directly supervise all work performed pursuant to the EPA-approved Restoration Plan. A statement of the consultant's qualifications, including professional resume and business references, shall be submitted to EPA within twenty-one (21) calendar days of receipt of this Order.

5. All dredged and fill material removal and restoration activities conducted pursuant to this Order and involving the use of heavy construction equipment shall be undertaken by an

equipment operator experienced in wetland restoration whose qualifications are acceptable to EPA. A statement of the equipment operator's qualifications, including professional resume and business references, shall be submitted to EPA within twenty-one (21) calendar days of receipt of this Order.

6. Within ten (10) calendar days of any disapproval by EPA of the qualifications of the consultant or equipment operator referenced in paragraphs 4 and 5 of Section III of this Order, Respondents shall submit the professional resume of another qualified individual for approval by EPA.

7. Within forty-five (45) calendar days of the receipt of this Order, Respondents shall submit to EPA for review a Restoration Plan, prepared by the consultant referenced in paragraph 4 of Section III of this Order, for removing the discharged dredged and fill material from Lake Elsie and its adjacent wetlands and restoring Lake Elsie and its adjacent wetlands to their pre-impact configuration and/or grade. The removal and restoration work reflected in the Restoration Plan shall include: (1) removal of all dredged or fill material that was deposited into Lake Elsie, its adjacent wetlands, or other waters of the United States as a result of the construction of the inlet channel, the placement of earthen fill into the boundaries of the wetlands adjacent to Lake Elsie, or any other activity performed at the Northeast Ridge Property; and (2) restoration, to their pre-impact condition, of all wetlands, Lake Elsie, and other waters of the United States that were impacted by the construction of the inlet channel, the placement of earthen fill into the boundaries of the wetlands adjacent to Lake Elsie, or any other activity performed at the Northeast Ridge Property.

8. The Restoration Plan shall be prepared in accordance with "U.S. Environmental Protection Agency, Region 8 - Clean Water Act § 404 Enforcement: Removal/Restoration Plans"

and Habitat Mitigation/Monitoring Proposals," attached hereto as Exhibit A, and with the guidelines referenced in section 404(b)(1) of the CWA, 33 U.S.C. § 1344(b)(1), and set forth in 40 C.F.R. Part 230. In addition, the Restoration Plan shall include:

- a. A complete assessment of the impacts to Lake Elsie and its adjacent wetlands on the Northeast Ridge Property, and any other waters of the United States due to the Respondents' actions as described in paragraph 16 of Section II of this Order;
- b. Locations and delineations of all wetlands in or adjoining the Northeast Ridge Property. The delineation shall be performed in accordance with the procedures set forth in the "Corps of Engineers Wetlands Delineation Manual, January 1987 - Final Report," including the procedures for atypical situations, and subsequent interpretive guidance published by the Corps;
- c. A detailed work plan and schedule for all of the work to be accomplished by the Restoration Plan, including the application for any required permits, providing for completion of all aspects of the restoration work no later than sixty (60) calendar days after EPA approves the Restoration Plan;
- d. Locations of the existing natural features and man-made improvements, including all surface disturbance, fills, channel excavations, road crossings, culverts, structures, and any other work, including a corresponding map (scale 1":100') of these locations;
- e. Grading, planting, and monitoring plans, measurable criteria for success of restoration, and provisions for proper disposal of any excess soils or other materials generated during construction and restoration;

f. Detailed professional drawings of all of the work to be accomplished by the Restoration Plan, including plan and profile drawings with control elevations; and

g. A description of all costs necessary to complete the work to be accomplished by the Restoration Plan, including the costs of all studies, consultations, permits, monitoring, and construction.

9. EPA will review the Restoration Plan and approve it, approve it with modifications, or reject it with comments. If EPA rejects the Restoration Plan, Respondents shall, within fifteen (15) calendar days of receipt of EPA's rejection letter, submit a revised plan that corrects the deficiencies identified by EPA.

10. Upon receiving EPA's written approval of the Restoration Plan, Respondents shall obtain all necessary permits to implement the EPA-approved plan and then commence all restoration activities in accordance with the approved plan, including the time frames specified therein, and all granted permits. Respondents shall demonstrate that all necessary permits have been granted by providing complete copies of all such permits, and any amendments thereto, to EPA within seven (7) calendar days of issuance of each permit.

11. This Order is not a permit or an authorization to place or discharge dredged or fill material in waters of the United States. Respondents shall consult with the Corps at the address and telephone number below to determine if any work to be performed pursuant to this Order requires a permit from the Corps under section 404 of the CWA. If required, Respondents shall obtain such permit(s) and provide a copy to EPA pursuant to paragraphs 10 and 12 of Section III of this Order prior to initiating any work that is to be performed pursuant to this Order.

U.S. Army Corps of Engineers
North Dakota Regulatory Office
1513 S. 12th Street
Bismarck, ND 58504
Telephone: (701) 255-0015

12. Respondents shall submit three (3) copies of the Restoration Plan, all notifications, and related correspondence to:

Kenneth Champagne, 8ENF-W
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: 303-312-6608
Facsimile: 303-312-6409

A copy of the Restoration Plan, all notifications, and related correspondence shall also be provided to:

Sheldon H. Muller, 8ENF-L
U.S. Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: 303-312-6916
Facsimile: 303-312-6953

13. In addition to the notification requirement set forth in paragraph 12 of Section III of this Order, after issuance of any Corps authorization for restoration work, Respondents shall submit all notifications and correspondence to the Corps in accordance with the terms and conditions in the Corps permit.

14. Any deliverables, plans, reports, specifications, schedules and attachments required by this Order are, upon approval by EPA, incorporated into this Order. Any non-compliance with such EPA-approved deliverables, plans, reports, specifications, schedules, and attachments shall be deemed a failure to comply with this Order and subject to EPA enforcement.

15. If Respondents lease or transfer ownership of, in whole or in part, any property where work is to be performed pursuant to the Restoration Plan before they have fulfilled their obligations under this Order, the Respondents shall provide a copy of this Order and the EPA-approved Restoration Plan to the transferee or lessee not less than thirty (30) calendar days prior to the transfer or lease. A transfer or lease of such property interest shall not relieve the Respondents of any responsibility in the Order unless EPA, Respondents, and the transferee or lessee agree in writing to allow the transferee or lessee to assume such responsibility. Additionally, at least thirty (30) calendar days prior to such transfer or lease, Respondents shall notify EPA regarding the details of the transfer or lease at the addresses specified in paragraph 12 of Section III of this Order.

16. Respondents shall allow, or use their best efforts to allow, access by any authorized representatives of EPA or its contractors, the Corps, the NRCS, the USFWS, the North Dakota Game and Fish Department, and the North Dakota Department of Health, upon proper presentation of credentials, to sites and records relevant to this Order for any of the following purposes:

- a. To inspect and monitor progress of the activities required by this Order;
- b. To inspect and monitor compliance with this Order; and
- c. To verify and evaluate data and other information submitted to EPA.

This Order shall in no way limit or otherwise affect EPA's authority, or the authority of any other governmental agency, to enter the site, conduct inspections, have access to records, issue notices and orders for enforcement, compliance, or abatement purposes, or monitor compliance pursuant to any statute, regulation, permit, or court order.

17. Respondents' obligations under this Order are joint and several. This Order shall be effective upon receipt by Respondents.

18. Please be advised that section 309(d) of the CWA, 33 U.S.C. § 1319(d), authorizes civil penalties of up to \$27,500 per day for each violation which occurred on or before March 15, 2004, and \$32,500 per day for each violation thereafter, of section 301 of the CWA, 33 U.S.C. § 1311, and for each violation of an order issued by the Administrator of EPA under section 309(a) of the CWA, 33 U.S.C. § 1319(a), including this Order. Additionally, section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes EPA to impose administrative penalties for violations of the CWA. Further, section 309(c) of the CWA, 33 U.S.C. § 1319(c), authorizes fines and imprisonment for willful or negligent violations of the CWA. Issuance of this Order shall not be deemed to be an election by the United States to forego any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for violations giving rise to the Order.

19. Compliance with the terms and conditions of the Order shall not be construed to relieve Respondents of their obligation to comply with any applicable Federal, state, or local law or regulation. Failure by Respondents to complete the tasks described herein in the manner and time frame specified pursuant to this Order may subject Respondents to a civil action under section 309 of the CWA, 33 U.S.C. § 1319, for violation of this Order.

DATED this 31 day of August, 2005.

Eddie A. Sierra
for Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

EXHIBIT A

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 8

CLEAN WATER ACT § 404 ENFORCEMENT: REMOVAL/RESTORATION PLANS AND HABITAT MITIGATION/MONITORING PROPOSALS

INTRODUCTION

These **guidelines** are designed to assist respondents in the preparation of (1) removal and restoration plans and (2) habitat mitigation and monitoring plans associated with projects required under EPA administrative orders. They have been developed from the experiences of many cases and are intended to be merely guidelines. In the event of a conflict between an administrative order and these guidelines, the administrative order controls.

For answers to questions regarding the interpretation of these guidelines or of acceptable restoration and mitigation for a specific project, please contact the person at EPA Region 8 in the Technical Enforcement Program who is handling the case.

CLEAN WATER ACT § 404 ENFORCEMENT:

GENERAL GUIDELINES FOR DEVELOPMENT OF REMOVAL AND RESTORATION PLANS

I. GENERAL INFORMATION

The following guidelines serve as general specifications for preparing removal and restoration plans to remediate the unpermitted filling of wetlands. As environmental conditions vary from site to site, precise specifications will depend upon the environment conditions peculiar to the site in question. The size of the wetland area to be restored, its biological and physical characteristics, and the level of disturbance the wetland has experienced will further define the scope and complexity of the restoration plan. In most cases, the types of information listed below represent only the minimum required to formulate an acceptable removal and restoration plan.

When these guidelines are incorporated into an EPA administrative order, the recipient of the order should obtain the approval of EPA's technical representative on the case before departing from the general specifications outlined below.

II. RECOMMENDED REMOVAL AND RESTORATION PLAN FORMAT

The removal and restoration plan should be presented using the following six subsections when possible. An explanation of the kind of information that should be included in each subsection is provided.

1. Existing Physical Conditions

- A. A surveyed site plan depicting property boundaries, streets, buildings, waterbodies (with ordinary high water line indicated), wetlands, FEMA 100-year floodplain (if applicable), areas of unpermitted fill, elevation contours, and other ground surface features at a scale no greater than 1":40'. This plan shall include a cross-section view of the site which shows soil depths, fill depths, and average depth to groundwater across the site.
- B. A narrative description of existing physical conditions, including the area of the site; area of unpermitted fill; existing wetlands (including the types of vegetation); the soil types present (including the types of unpermitted fill present); the hydrologic regime of the site; and other relevant information.

2. Proposed Physical Conditions

- A.** Using the site plan described in Subsection 1.A. as a base, show the exact areas where remedial activities will occur (e.g., removal of fill, replacing dredged material into ditches, etc.). Indicate proposed finished grades, expected ordinary high water elevations, the location of proposed plantings/seedings, and the location of all sediment and erosion control structures (e.g., hay bales, silt screens, etc.). This plan shall include a cross-section view of the site which shows proposed soil depths and average depth to groundwater across the site.
- B.** Provide a narrative description of the remedial work to occur, including the methods and equipment to be employed; how access to the site to perform the work will be obtained; how equipment will be brought to the site; the location of the ultimate disposal site for any removed fill; how the work will progress across the site; a listing of the plant species to be seeded/planted at the site; the sources of the plant material [note: as a rule, transplanting of plant stock will not be permitted]; the planting method(s) and scheme (i.e., physical layout of the how plant material will be installed); any methods to be used to minimize adverse impacts while remedial work is underway; the expected hydrologic regime of the site in its restored condition; and other relevant information.
- C.** Delineate the area(s) on the site to be restored by installation of flagging, sedimentation and erosion control structures, or other appropriate method. This delineation shall represent the limit of construction activities such that no work shall occur beyond those boundaries.

3. Actual Restored Physical Conditions

Using the site plan described in Subsection 1.A. as a base, show the actual physical conditions to exist at the site at the completion of grading activities (i.e., as "as-built" plan), including actual finished grades and all pertinent ground surface features. This plan shall include a cross-section view of the site which shows actual soil depths and average depth to groundwater across the site. This as-built plan shall be prepared and submitted prior to planting/seeding activities.

4. Monitoring/Measures of Success

- A.** Normally, monitoring shall be performed midway through and near the end of the first and second growing seasons, then annually near the end of each successive growing season for the duration of the required monitoring period. Monitoring shall be performed for a period of three to

five years, depending upon the scope and complexity of the remedial efforts required.

- B. A monitoring plan shall incorporate a simple statistical approach to assessing relative success or failure of restoration efforts (e.g., transects with sampling stations for measuring parameters such as percent areal cover in each vegetative stratum). A permanent photographic record shall be included as part of the monitoring plan.
- C. Depending upon the scope and complexity of the remedial efforts, general criteria to measure success shall be determined by EPA. These criteria shall be directly related to reestablishing the structural components of the aquatic ecosystem being restored. A general provision shall be included to allow for corrective action to be taken, at the direction of EPA, should monitoring show that criteria for success are not being met.
- D. A report shall be prepared and submitted after each monitoring event which describes the environmental conditions at the site and assesses relative success or failure of restoration efforts. This report shall include photographic evidence as well. This report shall identify any problems discovered and recommend appropriate corrective action to ensure the success of restoration.

5. Inspections

The plan shall provide for inspections by EPA personnel after installation of all sedimentation and erosion control structures, after completion of grading activities, after completion of initial planting/seeding activities, and after monitoring indicates that the criteria for success have been attained.

6. Schedule

A comprehensive schedule integrating all removal, restoration, inspection, and monitoring activities as well as report/product submissions shall be included.

CLEAN WATER ACT § 404 ENFORCEMENT:

GENERAL GUIDELINES FOR DEVELOPMENT OF HABITAT MITIGATION AND MONITORING PROPOSALS

I. GENERAL INFORMATION

Submission of a mitigation and monitoring proposal as described in these guidelines will not be a substitute for complete compliance with the Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Mitigation under the Clean Water Act Section 404(b)(1) Guidelines dated November 7, 1989, which took effect on February 7, 1990. Therefore, mitigation proposals will only be considered if avoidance and minimization have been fully pursued.

Although all the individual components presented here may not be applicable to every project, a proposal should address each heading in the guidelines. Appendix A provides text and figure format guidelines.

II. PLACE OF MITIGATION AND MONITORING PROPOSAL IN CLEAN WATER ACT § 404 PERMIT PROCEDURE

1. Individual Permit

If a respondent is applying for an individual permit from the U.S. Army Corps of Engineers (the "Corps") and proposes mitigation, it is preferable that a preliminary mitigation and monitoring plan be submitted along with application materials. A detailed preliminary mitigation plan should generally not be completed until a final jurisdictional map has been accepted by EPA, and the area of fill to be mitigated for has been identified. The final mitigation plan will usually be submitted following the public comment period and Corps review of the preliminary plan.

2. Nationwide Permit

If a respondent is requesting confirmation of a project's qualification for a Corps nationwide permit and proposes mitigation, a detailed mitigation and monitoring plan must be submitted with the request for confirmation.

3. Final Submission

The final submission of all mitigation and monitoring plans must be in a single document. It must contain up-to-date versions of all materials, even if other versions were submitted earlier in the application process.

III. EPA/CORPS POLICY

In general, the goal of both EPA and the Corps is to permit no net loss of functions and values of wetland habitat. The replacement ratio of wetland acreage required to achieve this goal is typically *at least* 1:1, and is often higher. The attainment of replacement functions and values and an acreage replacement ratio are usually included in final success criteria associated with the completion of a respondent-permittee's mitigation responsibility.

V. SUMMARY OF RECOMMENDED MITIGATION AND MONITORING PROPOSAL FORMAT

The mitigation and monitoring proposal should be presented using the following nine subsections when possible. Detailed explanations of the kind of information that should be included in each subsection is provided in Section VI below.

1. PROJECT DESCRIPTION

- A. Location of Project
- B. Brief Summary of Overall Project
- C. Responsible Parties
- D. Jurisdictional Areas to be Filled
- E. Type(s), Functions, and Values of the Jurisdictional Areas

2. GOAL(S) OF MITIGATION

- A. Type(s) of Habitat to be Created
- B. Functions and Values of Habitat to be Created
- C. Time Lapse

3. FINAL SUCCESS CRITERIA

- A. Target Functions and Values
- B. Target Hydrological Regime
- C. Target Jurisdictional Acreage to be Created

4. PROPOSED MITIGATION SITE

- A. Location and Size of Mitigation Area
- B. Ownership Status
- C. Existing Functions and Values of Mitigation Area
- D. Present and Proposed Uses of Mitigation Area
- E. Jurisdictional Delineation (if applicable)
- F. Present and Proposed Uses of All Adjacent Areas
- G. Zoning

5. IMPLEMENTATION PLAN

- A. Rationale for Expecting Implementation Success
- B. Responsible Parties
- C. Site Preparation
- D. Planting Plan
- E. Schedule
- F. Irrigation Plan
- G. As-Built Conditions

6. MAINTENANCE DURING MONITORING PERIOD

- A. Maintenance Activities
- B. Responsible Parties
- C. Schedule

7. MONITORING PLAN

- A. Performance Criteria
- B. Monitoring Reports
- C. Annual Reports
- D. Schedule

8. COMPLETION OF MITIGATION

- A. Notification of Completion
- B. Corps Confirmation

9. CONTINGENCY MEASURES

- A. Initiating Procedures
- B. Alternative Locations for Contingency Mitigation
- C. Funding Mechanism
- D. Responsible Parties

VI. DETAILED RECOMMENDED MITIGATION AND MONITORING PROPOSAL FORMAT

Detailed information to be included in each subsection of the mitigation and monitoring proposal is presented below. The nine subsections should be preceded by a one-page summary of the report contents.

1. **PROJECT DESCRIPTION**

A. **Location of Project**

1. Describe
2. Provide:
 - a. Road map with site location clearly indicated
 - b. USGS quad map with project site outlines (clear photocopy is acceptable)

B. **Brief Summary of Overall Project**

In one or two paragraphs, describe the overall project (not just the jurisdictional area to be filled). Include type of development and project size.

C. **Responsible Parties**

Provide the name(s), title(s), address(es), and phone number(s) of the applicant(s)¹, including the contact person(s) if the applicant is a company, and of the preparer(s) of the mitigation plan.

D. **Jurisdictional Areas to be Filled**

Provide a full-size topo base map with verified Corps/EPA jurisdictional area(s) and area(s) of proposed fill outlines. (See Appendix A for map format information.)

E. **Type(s), Functions, and Values of the Jurisdictional Areas**

1. Type: e.g., seasonal wetland, vernal pool, freshwater marsh, playa, etc.
2. Functions and Values

Formal procedures to assess functions and values of wetlands have not yet been adopted. Therefore, to assist in evaluation of the project, a knowledgeable professional should provide a summary of the functions and values of the wetland to be filled. Any jurisdictional areas other than wetlands should also be assessed for functions and values. Examples of features to be addressed are:

¹ The "applicant" refers to the permit applicant, who will in most instances be the respondent.

Water Quality

- ground water
- recharge/discharge
- flood storage
- other

Habitat

- rare/threatened/endangered species
- known or probable wildlife use
- plant communities
- complete species list
- known or probable fish, shellfish, and aquatic vertebrate use
- other

Recreational Use

- non-consumptive (e.g., birdwatching, walking)
- consumptive (e.g., fishing, hunting)

2. GOAL(S) OF MITIGATION

This refers to the long-term goals, which may not be reached until some years after the applicant's mitigation responsibilities have been completed.

A. Type(s) of Habitat to be Created

If out-of-kind, present rationale. (Refer to Subsection 1.E.1 above.)

B. Functions and Values of Habitat to be Created

Identify, describe, and provide location of any local reference site if different from the wetland to be filled. (Refer to Subsection 1.E.2. above.)

C. Time Lapse

Describe how many years it is likely to take for the long-term goal habitat to develop.

3. FINAL SUCCESS CRITERIA

These are the criteria that are proposed by the applicant for Corps approval and are used to determine completion of permittee's mitigation responsibilities. Fulfillment of these criteria should indicate that the mitigation area is progressing well toward the habitat

type, functions, and values which constitute the long-term goal of this mitigation. For mitigation plantings, final success criteria will not be considered to have been met until a minimum of two years after all human support (e.g., irrigation, replanting, rodent control, and fertilization) has ceased. Major factors to be considered are:

A. Target Functions and Values

- wildlife species
- percentage vegetation cover and/or density
- approximate plant height criteria (shrubs and trees)
- plant and animal species diversity
- root development
- canopy stratification
- other quantifiable measures of success

B. Target Hydrological Regime

- source(s) of water
- discharge point(s)
- area(s) affected by seasonal flooding
- direction(s) of flow
- size (and map) of watershed

C. Target Jurisdictional Acreage To Be Created

Where applicable, a formal wetlands determination must be submitted for Corps approval as a part of the final success criteria.

4. PROPOSED MITIGATION SITE

A. Location and Size of Mitigation Area

1. Describe location, including rationale for choice. If offsite, indicate distance from project site.
2. Provide the following maps:
 - a) full-size copy of USGS quad map with the mitigation location outlined
 - b) road map marked with the site location
 - c) base topo map with the proposed mitigation area outlined and acreage indicated. (See Appendix A for figure format information.)

B. Ownership Status

1. Indicate who presently owns the mitigation site. If any owner is different from the permit applicant(s), describe and explain the availability of the property. Describe and explain any easements or encroachments that the property carries. If any of the property is located on public land, describe and explain what arrangements, if any, have been discussed with the managing agency.
2. Indicate expected ownership of the mitigation area following completion of the mitigation project. Identify who will be responsible for long-term management and protection of the area. Describe and explain what if any long-term management plan been prepared for the area. If an entity other than the applicant will assume management responsibilities following completion of mitigation project, describe and explain any signed, written agreement that the manager will manage the area in conformance with goals of the mitigation. Include copies of any written plans or agreements.
3. Indicate what entity, if any, controls water flow to or from the site. Identify and describe the party who is to maintain water control structures. Describe and explain what arrangements have been made to guarantee appropriate water flow in the mitigation area during and after the establishment of the mitigation project.

C. Existing Functions and Values of Mitigation Area

(Refer to Section I.E. above.)

D. Present and Proposed Uses of Mitigation Area

Briefly describe all known present and proposed uses of the mitigation area. Discuss non-native landscape plantings, pipelines, powerlines, roads, distance and location of nearest structures, if any, etc., on the property containing the mitigation site.

E. Jurisdictional Delineation (if applicable)

Describe any jurisdictional areas that are already present on the mitigation site. Provide a topo base map of the site with jurisdictional areas (and any proposed fill) indicated. Describe the probable future of the mitigation area as habitat if left undisturbed.

F. Present and Proposed Uses of All Adjacent Areas

Briefly describe all known present and proposed uses of all property sharing a common border with the property containing the mitigation.

G. Zoning

Give all present and proposed zoning designations for the mitigation site and adjoining properties, including city, county, BCDC, etc.

5. IMPLEMENTATION PLAN

A. Rationale for Expecting Implementation Success

May refer to previous relevant experience of applicant and/or implementation consultant or to other similar and successful mitigation projects. Include hydrology and soils information.

B. Responsible Parties

Provide the name(s), title(s), address(es), and phone numbers of the person(s) responsible for implementing the mitigation project.

C. Site Preparation

1. Describe plans for grading, hydrologic changes, water control structures, soil amendments, erosion control, bank stabilization, equipment and procedures to be used, site access control, etc., as applicable. Include a description of exotic vegetation control techniques, planting hole excavation methods (e.g., auguring, hand digging), and the size of the planting hole (e.g., twice size of container).
2. Provide base topo maps showing planned site preparation. (See Appendix A for figure format information.)
3. Provide representative cross-sections of the mitigation site with elevations and scale indicated.
4. Provide the name, title, address, and phone number of the person supervising or providing biological monitoring during grading activities.

D. Planting Plan

1. Briefly describe the planting plan and methods
2. Provide a table of species to be planted, including numbers, spacing, types of propagules, pot sizes, etc.
3. Indicate the source-locale of seeds, plant plugs, cuttings, etc.
4. Show planting and species locations on a base **topo** map. (See Appendix A for figure format information.)
5. If transplanting is to be done, describe the storage method and duration.
6. Describe any expected volunteer native revegetation that is included in mitigation planning.

E. Schedule

Provide a schedule in the form of a legible flow chart showing intended timing of site preparation and plantings.

F. Irrigation Plan

1. Describe irrigation method(s), estimated frequency, and amount during dry months.
2. Indicate water source(s) for the mitigation area.
3. Show the planned irrigation system and/or water flow on base **topo** (may be included on the planting plan map).

G. As-Built Conditions

The plan should specify that the applicant will:

1. Submit a report to EPA within 6 weeks of the completion of site preparation and planting, describing the as-built status of the mitigation project. If avoidance is incorporated into development project design, describe the as-built status of the development project, including and deviations from the original plan in the vicinity of, or that will affect, jurisdictional area(s). Submit separate reports for grading and planting work if not completed within six weeks of each other.

2. Provide topo maps showing as-built contours of the mitigation area. Indicate the location of plantings and any other installations or structures.

6. MAINTENANCE DURING MONITORING PERIOD

A. Maintenance Activities

Describe planned maintenance activities, including irrigation system inspection, plant replacement, weeding, water structure inspection, fertilization, erosion control, herbivore protection, trash removal, and/or any other such activities.

B. Responsible Parties

Identify the persons/entities responsible for financing and carrying out maintenance activities, including names, titles, addresses, and phone numbers.

C. Schedule

Provide a table showing the schedule of maintenance inspections.

7. MONITORING PLAN

A. Performance Criteria

Provide yearly target criteria to be met, as appropriate, based on reasonably-paced progress toward final success criteria. (Refer to Section III.)

B. Monitoring Methods

1. Describe the monitoring methods. If using sampling methods, include sample sizes, statistical justification for sampling regime, and data analyses to be performed. If appropriate, include assessment of natural population growth by target species.
2. Provide samples of all proposed data sheets.
3. Photos shall be taken during each monitoring period. They shall be taken from the same vantage point and in the same direction every year, and shall reflect material discussed in the monitoring report.

When percent cover estimates are made of herbaceous vegetation, photographs shall be taken of sampling quadrants.

C. Annual Reports

1. Annual reports shall be submitted which present **monitoring** results. They shall assess both attainment of **yearly target criteria** and progress toward final success criteria.
2. Annual reports shall include the following:
 - a. A list of names, titles, and companies of **all persons** who prepared the content of the annual report and participated in monitoring activities for that year.
 - b. A copy of any Corps permit attached. **Special Conditions** and any subsequent Letters of Modification shall be included as an appendix.
 - c. Analysis of all quantitative monitoring **data**.
 - d. Prints of all included monitoring photographs (photocopies are not acceptable).
 - e. Maps identifying monitoring areas, transects, planting zones, etc., as appropriate. (See Appendix A for figure format information.)
3. Copies of all field data sheets shall be available for Corps review as needed.

D. Schedule

Since planting and/or site modification may not occur when planned, monitoring and performance criteria shall be tied to the actual implementation date rather than to predetermined years (e.g., the first annual report shall be delivered on (month, day) of the year following the first growing season after planting.)

8. COMPLETION OF MITIGATION

A. Notification of Completion

When the initial monitoring period is complete, and if the applicant believes that the final success criteria have been met, the applicant shall

notify the Corps when the annual report that documents **this completion is** submitted. If it is appropriate here, a current jurisdictional **delineation of** the created wetland areas should be submitted with the **report**. (This delineation shall be accompanied by legible copies of **all field data sheets**.)

B. Corps Confirmation

Following receipt of the report, the Corps may require a **site visit** to confirm the completion of the mitigation effort and any **jurisdictional delineation**.

9. CONTINGENCY MEASURES

A. Initiating Procedures

If an annual performance criterion is not met for all or **any portion of the** mitigation project in any year, or if the final success **criteria are not met**, the permittee shall prepare an analysis of the cause(s) of **failure** and, if determined necessary by the Corps, propose remedial **action** for approval.

B. Alternative Locations for Contingency Mitigation

Indicate specific alternative mitigation locations that **may be used in the** event that mitigation cannot be successfully achieved **at the intended** mitigation site. Include current ownership information **for any offsite** alternative locations.

C. Funding Mechanism

Indicate what funds will be available to pay for **planning, implementation,** and monitoring of any contingency procedures that **may be required to** achieve mitigation goals.

D. Responsible Parties

List names, addresses, and phone numbers of persons/entities **responsible** for implementing and monitoring contingency procedures.

APPENDIX A – FORMAT INFORMATION

A. Text Format Notes for Mitigation/Monitoring Proposals, As-Built Reports, and Annual Reports.

1. The Corps file number and the date of the report should be included in title-page reading.
2. Include a distribution page listing names, titles, companies/agencies and addresses of all persons/agencies receiving a copy of the report.

B. List of Figures to be Submitted

(Page and section numbers in parentheses indicate location of figure request in annotated outline. For recommended figure formats, refer to Section (C) below.)

1. Mitigation and Monitoring Proposal
 - a. Jurisdictional Areas and Proposed Fill on Project Site (*p. 8, 1.D.*) (outlines and acreages indicated.).
 - b. Location and Size of Mitigation Area
 - U.S.G.S. quad map (*p. 10, 4.A.2*)
 - road map (*p. 10, 4.A.2*)
 - topo map (*p. 10, 4.A.2*)
 - c. Jurisdictional Areas and Any Proposed Fill on Mitigation Site (*p. 11, 4.E.*)
 - d. Mitigation Site Preparation (*p. 12, 5.C.2*)
(base topo map showing preparation plans)
 - e. Planting Plan (*p. 13, 5.D.4*)
 - plan view of base topo
 - representative cross-sections
 - f. Irrigation Plan (*p. 13, 5.F.3*) (may be on planting plan topo)

2. **As-Built Report (p. 14, 5.G.2)**

- a. Final site contours
- b. Plantings as installed

C. Figure Format Notes

- All maps and plans submitted shall be legible and include title, date of preparation, and date of submission.
- A legend shall be provided if symbols, patterns, or screens are used on the map or plan.
- If colors are used to indicate areas on the original map, color copies shall be included in all copies of the report submitted to the Corps.
- Indicate North and provide a scale and datum (if appropriate, i.e., tidal data).
- Scale and orientation shall be the same for all maps, except for detail sections.
- Base topo maps (i.e., for jurisdictional areas, location and size of mitigation areas, mitigation site preparation plans, planting plans, irrigation plans, and as-built reports) shall be full-size (1 inch = 100 feet or less, 1 inch = 200 feet for very large projects).
- USGS quad maps shall be full-size and full scale (may be photocopies, if clearly legible).

NOTE: Reduced copies of maps shall be bound with all documents to facilitate review by advisory agencies. For Corps review, at least two sets of full-sized copies shall accompany mitigation and monitoring proposal, and one set shall accompany each annual report.

D. Schedule

When submitting the mitigation and monitoring plan, the applicant shall indicate the month and date on which the yearly report will be delivered. If plan involves planting, this date should be made between growing seasons for the primary plants so that timely decisions can be made about any modifications to the plan.

REQUEST FOR INFORMATION

This information is requested pursuant to Section 308 of the Clean Water Act, 33 U.S.C. § 1318(a). This Information Request is not subject to the approval requirements of the Paperwork Reduction Act, 44 U.S.C. § 3507.

If you cannot answer any request, please explain why. If you find out about information and/or any document after you send your reply, please forward the newly found information and/or document(s) to EPA as soon as possible.

For requests to identify a person who is an individual, please provide that individual's name, present or last known business address, and business telephone number. For requests to identify a person who is a business entity, please provide its full name, address, and legal form (e.g., corporation, partnership, etc.).

Please certify your answers. We have enclosed an example of a certification form that you may use for this purpose.

You are entitled to claim that EPA should treat any of the requested information as confidential. To make such a claim, you will need to follow the procedures in 40 C.F.R. part 2, subpart B. If you make a confidentiality claim, EPA will disclose the information covered by your claim only as allowed by that subpart. There is no guarantee that EPA will agree that the information should be kept confidential. If you do not make a confidentiality claim when you submit the information to EPA, EPA may make the information available to the public without notifying you. You must provide the requested information even if you claim it is confidential.

If your organization is a small business, you may find the enclosed Small Business Regulatory Enforcement and Fairness Act (SBREFA) information sheet useful. It contains information on compliance assistance resources and tools available to small businesses. By including this information sheet, EPA has not necessarily determined that your company is a small business. SBREFA does not eliminate your responsibility to respond to this information request.

It is very important that you respond to this request for information, and your attention to this matter is greatly appreciated. Please note that the failure to provide required information may potentially result in civil penalties of up to \$32,500 per day of violation, and that even harsher criminal consequences are possible in the case of deliberate false statements. (33 U.S.C. § 1319; 40 C.F.R. part 19; 18 U.S.C. §1001.)

For each numbered request below, please provide; (1) the specified information; (2) copies of any documents relied upon to compile the information; and (3) copies of other documents requested, within thirty (30) calendar days of your receipt of this letter to:



U.S. Environmental Protection Agency
Region 8 (8ENF-W)
999 18th Street, Suite 300
Denver, CO 80202-2466
Attn: Aaron Urdiales & Kenneth
Champagne

North Dakota Department of Health
Water Quality Program
1200 Missouri Avenue
P.O. Box 5520
Bismarck, ND 58506-5520
Attn: Gary Bracht

Respond to each request to the best extent possible. If you can not respond to a specific question, please provide an explanation as to why you can not answer. If information or documents become known after you send your reply, forward the newly found information as soon as possible. Please note that for purposes of this request, the following terms have the following meanings:

- "Storm water" and "discharge of storm water" each shall have the same definitions as in 40 C.F.R. § 122.26.
- "Dredged material", "discharge of dredged material", "fill material" and "discharge of fill material" each shall have the same definitions as in 33 C.F.R. § 323.2.
- "Person" shall have the same definition as in Section 502(5) of the Act: an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.
- "Site" means the property owned and/or controlled by David J. Paulson and/or Northeast Ridge Development Company, and located in Hankinson, Richland County, North Dakota, in Sections 23 and 26, Township 130 North, Range 50 West.
- "Waters of the United States," "wetlands," and "adjacent" each shall have the same definition as in 33 C.F.R. part 328.
- "You" and "your company" mean David J. Paulson, Northeast Ridge Development Company, and any parent, subsidiary, or affiliated company, predecessor- or successor-in interest, any other related business entity, and any officer, director, manager, employee, contractor, trustee, partner, successor, assign, and agent of any such company or entity.



Questions

1. Describe the corporate structure of your company (including the names and addresses of corporate officers and directors) and any parent companies or subsidiaries, including where they are incorporated, other names they have ever done business under, and addresses of office locations.
2. List by name, title, and address all corporate officers, contract companies and other staff responsible for construction activities, environmental compliance, permitting activities or inspections conducted at the Site since the beginning of the project. Provide all contracts or other documents related to such work.
3. Describe your involvement at the Site (e.g., owner, developer, builder, general contractor, subcontractor, etc.). If you were contracted to do work at the Site by another party, provide the name, address, phone number for this company or individual.
4. Identify the number of acres of the Site your company purchased or otherwise has and interest in, and whether construction activity had occurred at the site prior to your company taking ownership or acquiring any interest. Include the contract for sale and deed to the property or other instrument evidencing any interest you may have in the Site.

Stormwater

5. Provide a statement and any document that describes or outlines the responsibilities related to storm water discharges at the Site, including, but not limited to, the construction and/or maintenance of storm water control structures and non-structural controls (e.g., dikes, fences, dams, drain protection, sediment traps, diversions, vehicle tracking control, street sweeping, seeding, etc.).
6. Provide documents that describe and depict the location of any storm water control structures and non-structural controls, including the date of their construction.
7. Specify the number of acres disturbed by the construction activity. Provide the acreage of all phases of construction and a list of every lot or parcel in the Site, by subdivision filing or lot number, where your company has constructed or is constructing a building or home, and specify for each lot the date(s) of sale, beginning construction, ending construction, landscaping, and final stabilization. In addition, indicate on a Site map the location of each lot. For lots or parcels sold to other builders or developers, indicate the date sold to the developer and the name of the buyer.
8. If you believe there is another person responsible for storm water requirements at the Site, provide the name, address and phone number of that person and the reason for your belief.



9. Provide all documents related to State or Federal permit applications or permits concerning the discharge of storm water at the Site, whether or not they involved you. Documents requested include, but are not limited to, permit applications or Notice of Intent to be covered by a general storm water permit, certification of permit authorization or copy of individual permit received, storm water pollution prevention plan (SWPPP) including revisions, notices of transfer of storm water permit coverage, and Notice of Termination for a general storm water permit.
10. For each inspection that has been conducted at the Site related to storm water discharges, provide a list of when, where, and by whom the inspection was conducted and include copies of all inspection reports.

Dredge and Fill Material

11. Describe, in detail, including purpose, date, and number of acres disturbed, all activities (including construction start, construction end, final stabilization) performed or to be performed by any person in conjunction with the design, permitting, and construction of any work at the Site, including scraping, excavation, trenching, reshaping, smoothing, leveling, shaping, filling, installation of pipes and drains, and other activities that involved the placement or movement of sod, soil, dirt, sand, cement or other fill material. Identify and provide all documents that relate in any way to the permitting and construction of work performed by any person at or in connection with the Site including construction logs, equipment rental agreements, grading work orders, certificates of stabilization occurred, and all documents, including agreements, contracts, and purchase orders, that relate in any way to the excavation, earthmoving, or discharge of dredged or fill materials at the Site.
12. Identify all persons who are involved in any work that has or will be performed at or concerning the Site; your response to this question shall include the identification of all persons who discharged dredged or fill material or conducted any excavation work at the Site, a description of the type and volume of material discharged or excavated by each such person, and the date(s) and location(s) of each discharge or excavation.
13. Provide all aerial photography taken of the Site, identify who arranged for and took the photographs, and specify the dates the photos were taken.
14. Provide a list of each piece of equipment used to perform work at or in connection with the Site, including the clearing, scraping, dredging or filling activities described previously. Describe the work, including but not limited to the excavation of the channel/wetland to create the marina and the discharging of dredged or fill materials into the channel and the large wetland, performed at or in connection with the Site with each piece of equipment, the date the equipment was used to perform such work, the year and model of each piece of equipment, and identify the owner and operator of each such piece of equipment.



15. Identify all persons who discharged dredged or fill material on the Site, state who authorized each discharge, and describe the type and volume of material discharged by each such person and the date(s) and location(s) of each discharge. Additionally, please identify any discharges of dredged or fill materials into Lake Elsie and/or its adjacent wetlands that occurred during site preparation and/or construction of the residential homes on the lots located directly adjacent to Lake Elsie on the North Shore. Attach documentation of the costs associated with each discharge and indicate by whom these costs have been or will be paid.
16. Identify and provide all clearance documents, permits, or other correspondence obtained from any federal, state, or local government agency authorizing or referring in any way to the discharge of dredged or fill material at the Site.
17. Describe all current and future plans for work that may affect wetlands or other waters of the United States at the Site.
18. Explain why a federal permit was not obtained prior to discharging dredged or fill material into wetlands or other waters of the United States at the Site. Identify all persons involved in the decision not to apply for a permit and identify and provide copies of all documents pertaining to the decision not to obtain a permit.
19. Describe any economic benefit from the Northeast Ridge Development and marina, resulting or expected from the un-permitted discharge of dredged or fill material at the Site, including, but not limited to, the purchase cost of the Site and the selling cost of each lot at the Site. For each form of economic benefit, provide all documentation relied upon to estimate the economic benefit and identify all persons who received or will receive that economic benefit.
20. Describe all measures that you took to ensure that unauthorized discharges did not occur during the performance of the work at the Site, and identify and provide all documents that relate in any way to those measures. If no measures were taken, please so state.
21. Please furnish copies of all photographs that you have of any work locations before, during, or after work performed at the Site. Please provide a description of each photograph including the subject of the photograph, the specific location within the Site where the photograph was taken, the date that the photograph was taken and the identity of the person who took each photograph.
22. Provide any other information about the Site that you believe may be useful in EPA's investigation.



STATEMENT OF CERTIFICATION

I certify **under** penalty of law that I am the person authorized on behalf of the person for whom I am signing below to respond to the United States Environmental Protection Agency's Information Request concerning the Site as defined therein, that I have personally examined and am familiar with the information (including all attachments) submitted in this response to the Information Request and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.

David J. Paulson.

Signature

Date

Printed Name

Official Title

Address



Northeast Ridge Development Company

Signature

Date

Printed Name

Official Title

Address





United States
Environmental Protection
Agency

Office of Enforcement and Compliance Assurance (2201A)
EPA 300-F-03-001 October 2003

Office of Enforcement and Compliance Assurance INFORMATION SHEET

U. S. EPA Small Business Resources

If you own a small business, the United States Environmental Protection Agency (EPA) offers a variety of compliance assistance and tools to assist you in complying with federal and state environmental laws. These resources can help you understand your environmental obligations, improve compliance and find cost-effective ways to comply through the use of pollution prevention and other innovative technologies.

Hotlines, Helplines and Clearinghouses

EPA sponsors approximately 89 free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements.

The National Environmental Compliance Assistance Clearinghouse provides quick access to compliance assistance tools, contacts, and planned activities from the U.S. EPA, states, and other compliance assistance providers:
www.epa.gov/clearinghouse

Pollution Prevention Clearinghouse
www.epa.gov/opptintr/library/ppicindex.htm

EPA's Small Business Ombudsman Hotline provides regulatory and technical assistance information.
(800) 368-5888

Emergency Planning and Community Right-To-Know Act
(800) 424-9346

National Response Center (to report oil and hazardous substance spills)
(800) 424-8802

Toxics Substances and Asbestos Information
(202) 554-1404

Safe Drinking Water
(800) 426-4791

Stratospheric Ozone Refrigerants Information
(800) 296-1996

Clean Air Technology Center
(919) 541-0800

Wetlands Helpline
(800) 832-7828

EPA Websites

EPA has several Internet sites that provide useful compliance assistance information and materials for small businesses. If you don't have access to the Internet at your business, many public libraries provide access to the Internet at minimal or no cost.

EPA's Home Page
www.epa.gov

Small Business Assistance Program
www.epa.gov/ttn/sbap

Compliance Assistance Home Page
www.epa.gov/compliance/assistance

Office of Enforcement and Compliance Assurance
www.epa.gov/compliance

Small Business Ombudsman
www.epa.gov/sbo

Innovative Programs for Environmental Performance
www.epa.gov/partners

Office of Enforcement and Compliance Assurance: <http://www.epa.gov/compliance>



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U.S. EPA SMALL BUSINESS RESOURCES

Compliance Assistance Centers

In partnership with industry, universities, and other federal and state agencies, EPA has established Compliance Assistance Centers (Centers) that provide information targeted to industries with many small businesses. All Centers can be accessed at:
<http://www.assistancecenters.net>

Metal Finishing

(1-800-AT-NMFRC or www.nmfrc.org)

Printing

(1-888-USPNEAC or www.pneac.org)

Automotive Service and Repair

(1-888-GRN-LINK or www.ccar-greenlink.org)

Agriculture

(1-888-663-2155 or www.epa.gov/agriculture)

Printed Wiring Board Manufacturing

(1-734-995-4911 or www.pwbr.org)

Chemical Industry

(1-800-672-6048 or www.chemalliance.org)

Transportation Industry

(1-888-459-0656 or www.transource.org)

Paints and Coatings

(1-800-286-6372 or www.paintcenter.org)

Construction Industry

(www.cicacenter.org)

Automotive Recycling Industry

(www.ecarcenter.org)

US / Mexico Border Environmental Issues

(www.bordercenter.org)

State Agencies

Many state agencies have established compliance assistance programs that provide on-site and other types of assistance. Contact your local state environmental agency for more information or call EPA's Small Business Ombudsman at (800)-368-5888 or visit the Small Business Environmental Homepage at <http://www.smallbiz-enviroweb.org>.

Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two policies that potentially apply to small businesses: The Small Business Policy (<http://www.epa.gov/compliance/incentives/smallbusiness>) and

Audit Policy (<http://www.epa.gov/compliance/incentives/auditing>).

Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established an ombudsman ("SBREFA Ombudsman") and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. The SBREFA Ombudsman will annually rate each agency's responsiveness to small businesses. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System (NAICS) designation, number of employees or annual receipts, defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community because the regulated community previously commented on its activities.

Your Duty to Comply

If you receive compliance assistance or submit comments to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) or related provisions.